SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANDREA TANTAROS

Petitioner,

Index No. _____

vs.

FOX NEWS CHANNEL, LLC., THE ESTATE OF ROGER AILES, WILLIAM SHINE, SUZANNE SCOTT, DIANNE BRANDI, IRENA BRIGANTI

Respondents.

PETITION TO STAY ARBITRATION OF PETITIONER'S SEXUAL HARRASSMENT ALLEGATIONS AND CLAIMS IN EMPLOYMENT ARBITRATION CASE # 01-16-001-7288 AND DECLARATORY JUDGMENT

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Sexual harassment in the workplace is epidemic. The inability of unsuspecting female employees with little bargaining power to resist mandatory arbitration of sexual harassment allegations or claims that enable sexual predators to escape public accountability, disclosure or embarrassment is notorious. Thus, Respondent Fox News Channel, LLC ("Fox"), coerced Petitioner (though a contract of adhesion) into accepting mandatory arbitration, among other things, of sexual harassment allegations or claims in her employment contract signed in 2014—the very definition of procedural and substantive unconscionability. In 2017, this Court ordered mandatory arbitration of Petitioner's claims against Respondents sounding in sexual harassment, including hostile work environment, retaliation for protesting sexual harassment for eighteen (18) months while employed. The latter covered Fox's belated bogus claim of a book guidelines violation concocted just weeks after Ms. Tantaros' multiple formal complaints to senior executives escalated into formal complaints made through her business and entertainment attorney, both orally and in writing, and in a meeting with the channel's general counsel and Human Resources Department.

At present, these sexual harassment allegations and claims are pending before the American Arbitration Association, Case No. 01-16-0001-7288, where they have largely ***idled for more than three (3) years*** at staggering financial, personal and professional expense to Petitioner. No successful, sophisticated person would plot involvement in exorbitant endless secret arbitration—a nightmare for claimants and a bonanza for corporate employers.

In 2018, the mushrooming public revelations of sexual harassment or predation—too numerous to chronicle at Fox News Channel and other business behemoths and too sordid to detail—provoked remedial action by the New York legislature. On April 12, 2018, New York Governor Andrew Cuomo

signed into law the state's budget for fiscal year 2018. Among other things, the Civil Practice Law and Rules were amended by adding a new section 7515 to address the epidemic of sexual harassment concealed by mandatory arbitration clauses that the Fox employment contract with Petitioner exemplifies.

Section 7515 is to mandatory arbitration of sexual harassment allegations or claims what *Brown v. Board of Education,* 347 U.S. 483 (1954) was to racial discrimination. Section 7515 recognizes that female employees are no more equal in resources and bargaining power in arbitrating sexual harassment claims against their employers than separate black schools were equal to separate white schools during Jim Crow. There must be a level playing field. In opening the courthouse doors to sexual harassment allegations notwithstanding mandatory arbitration clauses, the section diminishes the staggering advantages employers enjoy over their female employees if they are authorized to conceal such disputes in a shroud of arbitration in perpetuity. Sunlight through due process is the only ammunition female employees victimized by sexual harassment or predation have against their powerful employers.

Section 7515 remedies the unconscionable practice of multi-billion-dollar companies like Fox notorious for unsavory or rapacious work environments to foist employment contracts on women mandating secret arbitration of sexual harassment allegations or claims. These mandatory arbitration clauses embolden employers to persist in mistreating female employees as sex objects. Section 7515 makes "null and void" any contract provision that requires "mandatory arbitration to resolve any allegation or claim of an unlawful discriminatory practice of sexual harassment" because they are procedurally and substantively unconscionable for victims.

Section 7515 applies to pending, non-final arbitration proceedings triggered by now illegal mandatory arbitration clauses that reach sexual harassment allegations or claims, including Petitioner's against Respondents in Case No. 01-16-0001-7288. The new remedial section necessitates immediate judicial intervention by this Court to prevent its violation by the Panel and Respondents in continuing to arbitrate Petitioner's sexual harassment allegations and claims on an inherently uneven playing field, notwithstanding the New York legislative directive that her allegations and claims be resolved in the first instance in this Court where justice is safeguarded by due process, accountability, and timeliness.

STATEMENT OF FACTS

More than three years ago, Fox initiated an arbitration against former employee and Petitioner, Andrea Tantaros, on May 11, 2016. Fox invoked a now unenforceable and prohibited mandatory arbitration clause covering sexual harassment allegations and claims under CPLR section 7515 in the Fox-Tantaros employment contract dated September 17, 2014. The clause was not subject to bargaining. It was a "take it or leave it" requirement indistinguishable from a contract of adhesion. Petitioner had no choice. With no carve out for sexual harassment allegations or claims, Fox's mandatory arbitration clause provided in part:

> "Any controversy, claim or dispute arising out of or relating to this Agreement or your employment shall be brought before a mutually selected three-member arbitration panel and held in New York City in accordance with the rules of the American Arbitration Association then in effect."

In AAA Case No. 01-16-0001-7288, Fox seeks a declaratory judgment that Petitioner violated her employment contract in publishing her book "Tied Up in Knots," and damages.

On August 22, 2016, Petitioner filed a Complaint in the Supreme Court of New York against Respondents alleging sexual harassment, a hostile work environment and retaliation.

On March 13, 2017, the Court entered an order granting Respondents' motion to compel arbitration of Petitioner's sexual harassment allegations and claims, where they remain idling in the Horse latitudes.

On April 12, 2018, New York changed the law regarding the enforceability of employer dictated mandatory arbitration provisions regarding allegations or claims of sexual harassment. Section 7515 of the CPLR made Fox's mandatory arbitration provision as to Petitioner's sexual harassment allegations and claims null and void and unenforceable in AAA Case No. 01-16-0001-7288 because of procedural and substantive unconscionability.

Petitioner's arbitration exemplifies the justification for section 7515. Petitioner had no ability to alter or amend Fox's mandatory arbitration clause regarding sexual harassment allegations or claims or otherwise. And mandatory arbitration is substantively unconscionable in disarming a female employee of her most powerful weapon against a predatory employer with deep pockets: publicity and a judicial

forum guaranteeing due process. Arbitration, in contrast, is shrouded in secrecy and shields a predatory employer from public accountability or loss of goodwill occasioned by complicity in sexual harassment.

Petitioner's protracted arbitration to date highlights the substantive unconscionability of mandatory arbitration of sexual harassment allegations or claims that gave birth to CPLR section 7515. Respondents know they have neither the facts nor the law on their side. They have thus systematically attempted from the inception of the arbitration to delay and to deflect attention from the merits of the claims and defenses to avoid the day of reckoning for their complicity in the sordid sexual harassment and retaliation of Ms. Tantaros. They have expended limitless resources and retained armies of lawyers from three different major law firms. Ms. Tantaros is constantly forced to respond to endless motions, ballooning the cost of the arbitration and the fees to the AAA as large as floats in the infamous Macy's Day Parade.

The Panel has endorsed Respondent's cynical strategy. ***The arbitration commenced over three years ago***, forcing Ms. Tantaros to spend well over seven-figures, after being professionally sidelined and slandered at the peak of her career as retaliation for making sexual harassment complaints. **There is still no light at the end of the tunnel for Ms. Tantaros**. Without explanation, the Panel has refused to allow even the scheduling of depositions. They have not ordered the parties to set a stipulated schedule for hearings. The Panel has frozen the action in time like a petrified forest, making Charles Dickens' infamous *Jarndyce v. Jarndyce* in *Bleak House* seem speedy in comparison.

Meanwhile, Petitioner is suffering irreparable harm to her career, reputation, and finances as Fox pursues her with the relentlessness of Captain Ahab and with money to burn. No wonder New York passed CPLR section 7515 with virtual unanimity because of the procedural and substantive unconscionability of mandatory arbitration of sexual harassment allegations or claims.

The arbitration Panel's rulings have overwhelmingly and overtly favored Respondents. Without explanation, Petitioner has been held to egregiously disproportionate, unreasonable and unjustifiable standards in discovery that her multi-billion-dollar media opponent has not. The Panel has also chronically violated its obligation to provide written opinions setting forth the reasons for their decisions to ensure due deliberation by the Panelists and to enable judicial review for overleaping arbitration guardrails.

ARGUMENT

I. THE COURT SHOULD GRANT PETITIONER A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

A temporary restraining order or preliminary relief is justified when the moving party demonstrates (1) a likelihood of success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and, (3) a balance of equities favoring the moving party. CPLR section 6301; see *Doe v. Axelrod*, 73 N.Y. 2d 748, 750 (1988).

A. Petitioner Is Likely To Succeed On The Merits

On April 12, 2018, New York Governor Andrew Cuomo signed into law the state's budget for fiscal year 2018. Among other things, the civil practice law and rules were amended by adding a new section 7515 to address the epidemic of sexual harassment that Fox News Network, LLC exemplifies. The anti-sexual harassment provision remedies the practice of powerful businesses like Fox notorious for unsavory or rapacious work environments to foist employment contracts on women mandating unconscionable secret arbitration of sexual harassment allegations or claims. Such mandatory arbitration clauses embolden companies like Fox to persist in degrading women as sex objects for management to harass, manipulate, intimidate or exploit by shielding their misconduct from the public, muzzling women with never-ending silence, while often allowing bad actors to remain at large. While arbitration languishes, women are unable to find gainful employment, have their reputations tarnished—which vulnerabilities corporate employers are eager to exploit in secret. Justice Louis Brandeis famously observed that, "Sunshine is said to be the best of disinfectants; the electric light the most efficient policeman."

Respondent was powerless to reject Fox's insistence on mandatory arbitration of sexual harassment allegations or claims in her employment contract. Her bargaining power against a multi-billion-dollar media behemoth was illusory. Mandatory arbitration represented an unconscionable contract of adhesion—take it or leave it. Female employees at Fox know they are easily replaceable.

To overcome unconscionability, section 7515 makes "null and void" any employment contract provision that requires "mandatory arbitration to resolve any allegation or claim of an unlawful discriminatory practice of sexual harassment." The section applies to pending non-final arbitration proceedings like Petitioner's involving sexual harassment allegations or claims. The United States Supreme Court explained in *Bradley v. School Board of Richmond*, 416 U.S. 696, 715-717 (1974), that an intervening change in the law—administrative, statutory, or constitutional—should be applied to pending disputes unless manifest injustice would result. Among other things, the Court declared that, "[E]ven where the intervening law does not explicitly recite it is to be applied to pending cases, it is to be given recognition and effect." Id. 715. The Court emphasized that, "[W]e must reject the contention that a change in law is to be given effect in a pending case only where that is the clear and stated intention of the legislature." Id.

Section 7515 does not clearly withhold its application to pending arbitrations of sexual harassment allegations or claims arising under pre-existing contracts that foisted unconscionable mandatory arbitration on vulnerable or unsuspecting female employees. *Bradley* teaches the section applies to such pending arbitrations absent manifest injustice.

That conclusion is reinforced by reading section 7515 as an integrated whole. Subsection (b) (1) provides; "Except where inconsistent with federal law, no written contact, entered into on or after the effective date of this section shall contain a prohibited [mandatory arbitration] clause as defined in paragraph two of subdivision (a) of this section." Subsection (b) (1) thus prohibits and makes illegal and unenforceable any *prospective* mandatory arbitration clause covering sexual harassment allegations or claims. But what about mandatory arbitration clauses in pre-existing employment contracts? They are addressed in subsection (b) (iii). It makes them "null and void." If that were not true, the subsection would be superfluous. It would make null and void what had already been made null and void by subsection (b) (i). A cardinal canon of statutory construction strongly disfavors redundancy. See e.g., Young v. UPS, 135 S. Ct. 1338, 1352 (2015).

Application of section 7515 to pending arbitrations also advances its purpose: to overcome the acute handicap of female employees in secret arbitration of sexual harassment allegations or claims by removing the threat to employers of adverse publicity and loss of business goodwill that could trigger bankruptcy ala the Weinstein Company. That purpose would be undermined, not fortified, if section 7515 were interpreted to leave pre-existing unconscionable mandatory arbitration clauses or ongoing mandatory arbitrations undisturbed.

The result is not manifestly unjust to Respondents. The substantive law governing Petitioner's sexual harassment allegations or claims would not change, but only the procedure for their enforcement. And that procedure would strengthen—not weaken—due process safeguards against injustice. No reasonable reliance interests of Respondents would be upset.

But assume there is ambiguity as to the application of section 7515 to pre-existing mandatory arbitration clauses for sexual harassment allegations or claims. *Bradley* instructs that the interpretive uncertainty be resolved in favor of application to pending, non-final arbitrations.

In sum, section 7515 prohibits Respondents and the Panel from continuing to arbitrate Petitioners' sexual harassment allegations and claims pursuant to the now "null and void" mandatory arbitration clause in her employment contract. Those allegations and claims include Fox's concocted assertion that Petitioner breached her contract book guidelines in writing "Tied Up in Knots." (their baseless justification from suspending Petitioner from the air). That assertion was a pre-textual smokescreen to retaliate against Petitioner for her repeated, documented complaints of sexual harassment, retaliation and hostile workplace beginning in 2015 through 2016.

Petitioner was the Rosa Parks at Fox in protesting against sexual harassment years before others had the courage to come forward. Petitioner protested both internally at the channel and publicly, and well before the #MeToo movement. Multiple complaints were made by Petitioner to Fox Senior Executives, the General Counsel, and via her business and entertainment attorney orally and in writing before Fox voiced any concerns over her book.

District Judge Denise Cote of the United States District Court for the Southern District of New York erred in *Latif v. Morgan Stanley*, et al, 2019 WL 2610985 (S.D.N.Y.) in concluding that section 7515 was preempted by the Federal Arbitration Act, 9 U.S.C. 2. The District Court neglected to consider that mandatory arbitration clauses in employment contracts covering sexual harassment allegations or claims are inherently procedurally and substantively unconscionable for the reasons elaborated above. See, e.g., *Kuzma v. Protective Ins. Co.* 2011 NY Slip Op 51348(U) (June 29, 2011) (Supreme Court, Queens County, Taylor J.) (Reproduced as Exhibit 1). As such, they are revocable at law and are saved from preemption under section 2 of the Act. The District Court correctly acknowledged that arbitration agreements may be invalidated by generally applicable contract defenses such as unconscionability (Slip Op. 6). But the Court failed to consider that employment contracts mandating arbitration of sexual harassment allegations or claims are paradigm examples of procedural and substantive unconscionability under generally applicable New York law. The United States Congress similarly concluded that employees are inherently disadvantaged in seeking to enforce discrimination claims under Title VII of the 1964 Civil Rights Act by endowing the Equal Employment Opportunity Commission with authority to sue private employers on their behalf. 42 U.S.C. 2000e et seq.

The District Court additionally stumbled by disregarding a cardinal principle of statutory construction in interpreting the preemptive ambit of the Federal Arbitration Act, i.e., the letter killeth, but the spirit giveth life. 2 Corinthians 3:6. The United States Supreme Court elaborated in *Steelworkers v. Weber,* 443 U.S. 193, 201 (1979): "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."

The Federal Arbitration Act was passed in 1925 almost a century antedating #MeToo. The Act contemplated arbitration between commercial entities of comparable size and strength. Its architects did not intend to disarm female employees with sexual harassment allegations or claims of the major weapon they command to receive justice, i.e., publicity and an open judicial forum without ulterior motives or financial conflict of interest dedicated to timeliness and impartiality. United States Supreme Court

Justice Ruth Bader Ginsburg dissenting in *Lamps Plus, Inc. v. Varela,* __ U.S. __ (April 24, 2019) (Slip. Op. 4-5) referenced CLPR 7515 with approval in conjunction with asserting "[p]lainly, it would not comport with the congressional objectives behind a statute seeking to enforce civil rights…to allow the very forces that had practiced discrimination to contract away the right to enforce civil rights in the courts.," citing *Barrentine v. Arkansas-Best Freight System, Inc.,* 450 U.S. 728, 750 (1981) Burger, C.J., dissenting). Even if mandatory arbitration clauses in employment contracts reaching sexual harassment allegations or claims fall within the letter of the preemptive ambit of the Federal Arbitration Act, it is not within the statute because not within its spirit, nor within the intention of its makers.

Moreover, this Court is not bound by the lone, ill-reasoned federal district court decision in *Latif.* Accordingly, Petitioner is likely to succeed in her claim that section 7515 prohibits continuing arbitration of her sexual harassment allegations and claims in AAA CASE # 01-16-0001-7288. Petitioner possesses a statutory right to have them resolved in this Court in the first instance.

B. Petitioner Will Suffer Immediate And Irreparable Injury Absent Temporary and Preliminary Injunctive Relief

That conclusion is the premise of section 7515, i.e., that female employees are inherently and irreparably prejudiced by mandatory arbitration of sexual harassment allegations or claims because it disarms them of their weapons of publicity and a judicial forum with safeguards against injustice. Petitioner's arbitration to date speaks volumes.

More than three years have passed and over seven figures has been spent by Petitioner, both in legal fees and fees to the three-person arbitration Panel (exorbitant fees that exceed six-figures and growing), yet the Panel has refused to allow even the scheduling of depositions and hearing dates, which Respondents are desperate to avoid. For the past six months, the arbitration has been held hostage to Fox's demand that Ms. Tantaros sign an additional, duplicative, onerous and unlawful Confidentiality Stipulation under CPLR 5003-b. The law prohibits forcing confidentiality agreements on sexual harassment claimants. The new law passed in concert with CPLR 7515 cites the need to increase the

"bargaining power for victims of sexual harassment" who are at a significant disadvantage when the employer holds all the power. The Confidentiality Stipulation, crafted by Fox News Channel, is riddled with liability and penalties drafted by Fox to ensure Petitioner's silence in perpetuity.

Petitioner has already signed a confidentiality stipulation regarding the arbitration as part of her employment contract with Fox News Network, LLC. Exhibit A to Employment Contract, Paragraph 8. (Reproduced as Exhibit 2). To pressure her further, the Panel has co-opted Fox's demand without explanation of its authority to do so. The terms and conditions of arbitration are a matter of contract between the parties. The Panel has never stated or insinuated that the confidentiality required of Petitioner under her employment contract with Fox is different in any material respect from the confidentiality agreement required by the Panel's Order on Supplemental Discovery, paragraph 1. (Reproduced as Exhibit 3).

The Panel's bias against Petitioner is underscored by its hypocrisy and indifference to the multiple confidentiality violations of the Estate of Roger Ailes in the New York Supreme Court Index Number 652130/2018 seeking an unsuccessful Stay of Arbitration to avoid participation in the arbitration. The violations were flagged by Petitioner's counsel in a letter to the Panel on October 3, 2018. (Exhibit 4). The flagrant violations are continuing. The wrongful disclosures can be downloaded on the Internet, yet the Panel has failed to address the continuing breaches and declined to discipline the Ailes Estate and its attorneys. These are the same movants who are currently attempting to muscle Ms. Tantaros into signing the agreement that they are flouting. In other words, the Panel is dropping a nuclear bomb on Tantaros for failing to sign a confidentiality agreement that it has declined to enforce against the Ailes Estate, and frozen the arbitration for six months over the dispute.

Moreover, the Panel's demand for Petitioner to sign a cumulative confidentiality stipulation accomplishes nothing other than to further burden, harass, and strip Petitioner of her right to speak. It is as mindless as insisting that an affiant sign an affidavit twice rather than once to substantiate its authenticity. Additionally, for Petitioner's failure to sign the document, the Panel has allowed Fox to withhold the final category of discovery, critical to her case; and, any responsive documents about

complaints, settlements, investigations or material related to sexual harassment, retaliation and hostile workplace made by her colleagues.

It is thus stunning that Respondents have used Petitioner's refusal as an opportunity to file a Motion to Dismiss the entire arbitration, which would allow them to avoid any cross-examinations, third-party testimony or hearings on the merits, outright denying Ms. Tantaros a full and fair due process. They have simultaneously filed a third, draconian Motion to impose Sanctions against Ms. Tantaros personally. It was errantly and irregularly smuggled into their Opposition to Respondent's Motion to Reconsider the Confidentiality Order as an unauthorized ambush calculated to prevent Ms. Tantaros from refuting Respondent's frolic.

The Motion is also patently frivolous. Respondents fail to articulate any reason to believe they have been disabled by Petitioner from a full and fair trial of the consequential or material issues in dispute or have sought proportionate discovery as mandated by Rule 26 (b) (1) of the Federal Rules of Civil Procedure.

Respondents' lengthy Motion to Dismiss and for Sanctions is designed to overwhelm the Panel with irrelevancies and showcases nothing new—old wine in new bottles—and to scare and intimidate Petitioner. Among other things, Respondents earlier improperly smuggled a Motion for additional forensics to be performed on Petitioner's electronic devices in a reply to a Motion to Compel additional discovery. Without explanation, the Panel granted their request without affording Ms. Tantaros the same opportunity to compel discovery on Respondent's electronics.

Renewing their absurd insistence on another round of costly forensics on her electronic devices, Respondent's rely on a batch of inadmissible text messages in a separate action to conclude she was a "prolific" user of text messaging. They provided no supporting metadata; they were not produced in native format; and, they were not verified by an independent third party—the benchmarks for admission of digital evidence in any legal action, including this arbitration.

That standard has not been enforced in this arbitration against Respondents. In contrast, Ms. Tantaros has gone above and beyond the standard. She had the suspect text messages forensically

analyzed by the world's foremost cyber-security firm, Cycura—the same firm that conducted the discovery on her devices and forensic examinations.[1] Cycura concluded the messages were fraudulent. Ms. Tantaros has submitted this analysis to the opposing parties and to the Panel, yet it continues to be ignored without written explanation, a violation of Tantaros' arbitration agreement with Fox.

Respondent's echo the refrain of the Bellman in Lewis Carroll's "The Hunting of the Snark" by repeating three times or more that Petitioner's discovery responses have been deficient; and, then shouting from the rooftops that what they tell you three times must be true. Petitioner has repeatedly demonstrated the falsity of the assertions in prior arbitration filings.

The Panel has never provided a written opinion setting forth the reasons explaining why Ms. Tantaros' arguments were unpersuasive as required by her arbitration clause with Fox. The Panel has never articulated a credible nexus between Respondent's alleged deficient discovery responses and the Respondents' ability to fairly prosecute or defend the pending claims and counterclaims. The lacunae are fatal to the Panel's Order requiring Respondent to conduct further forensic discovery of her electronic devices. Rule 9 of the AAA's Employment Arbitration Rules and Mediation Procedures circumscribes discovery to that "necessary to a full and fair exploration of the issues in dispute consistent with the expedited nature of arbitration." Respondent's discovery demands fall far short of Rule 9's threshold. Indeed, they already enjoy custody or control over all evidence material to proving their claims or defenses. Far from being obstructionist, Petitioner shared discovery evidence with the Respondents voluntarily in December of 2017, before a formal discovery schedule and to avoid any accusation of dilatoriness.

Rule 26 (b) (1) of the Federal Rules of Civil Procedure provides in relevant part: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the

[1] Cycura is the primary cyber-security firm used by the Federal Bureau of Investigation, The Department of Homeland Security, The Defense Intelligence Agency, and several other alphabet agencies including many allied NATO intelligence services.

amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Respondents have not come within shouting distance of showing additional, duplicative forensic discovery of Petitioner's electronic devices currently required by Panel satisfies the proportionality standard of Rule 26 (b) (1).

Contrary to Respondents, Rule 9 does not authorize discovery ad infinitum in search of cumulative or peripheral crumbs. The disputes before the Panel are factually and legally uncomplex. They are not antitrust claims. They do not implicate patents or state secrets. Why are Respondents terrified of a resolution on the merits and cross-examination of witnesses? Evidence maven John Henry Wigmore said it all: "[Cross-examination is] beyond any doubt the greatest legal engine ever invented for the discovery of truth." 5 J Wigmore, Evidence, section 1367, p. 32 (Chadbourne rev. 1974).

Petitioner has agreed to run every search term requested by the Fox Parties, almost every category and searched her electronic devices, two personal email accounts and her three social media accounts. In contrast, Respondents have objected to every additional, highly relevant search term requested by Petitioner, almost every category and custodian, and refused to answer critical interrogatories. This forced Petitioner to exhaust resources on a thirty-page Motion to Compel. The Panel granted a minimal number of her requests, and without justification, denied her Motion for Spoliation Sanctions when Fox News Channel openly admitted to destroying evidence, failed to place the necessary privilege hold on relevant documents, and remotely wiped Ms. Tantaros' work Blackberry, putting her at a severe disadvantage as Fox is the keeper of all data on the device. Additionally, Petitioner had a forensic examination done by Cycura on her work Blackberry to prove the device had been wiped remotely by the Administrator (Fox News Channel). The forensic examination concluded additional troubling evidence that Fox News had placed spyware on her devices—both her work and personal electronics—and key-logging software allowing them to monitor her communications and access her phone, camera and microphone remotely.

Ms. Tantaros has had all her discovery conducted and verified by two (2) independent third parties and produced the material with accompanying metadata in native format. On the other

hand, The Panel has inexplicably permitted Respondents to self-certify, having no independent third party verify their discovery, included no supporting metadata on all of their materials, have not produced the documents in native format, and have not been ordered by the Panel to disclose or search their personal or work electronics, let alone have them examined by an independent third-party as they have ordered of Ms. Tantaros. A judicial tribunal would not permit such skewed, asymmetrical, and prejudicial discovery.

Moreover, the Panel has failed to provide a full written opinion setting forth the reasons for the plurality of its Orders, specifically on Supplemental Discovery and the case-altering Decisions on the Motion to Compel, paragraph 1, as required by Respondent's employment contract, Exhibit A, paragraph 8: "The arbitrators shall issue a full written opinion setting forth the reasons for their decisions." The requirement of written opinions is substantive, not ornamental. It ensures that the Panel fully deliberates and digests the arguments and issues before it. They are also necessary for judicial review in the event the Panel leaps over its arbitration guardrails.

The American Arbitration Association counts Fox News Channel and Disney (a corporation that recently acquired Fox News' former parent company, 21st Century Fox) among their largest customers. They are repeat clients, and, unlike judges, the AAA has a financial interest in keeping it that way. These realities cannot go ignored considering the disproportionate, one-sided orders and standards imposed by the Panel without required explanation, the willingness to delay the proceedings over three years and entertain the opposing parties antics, and the astronomical costs saddled on Petitioner in challenging a multi-billion-dollar media giant.

Arbitration is touted as a faster, more cost-effective alternative to litigation. In Petitioner's case, arbitration has proven the opposite. Change in counsel has not caused substantial delay by either side. Without immediate judicial intervention under CPLR 7515 and due process, Petitioner will suffer irreparable financial injury and prejudice by continuing participation in an illegal, interminable, and biased arbitration of her sexual harassment allegations and claims.

C. The Balance of Equities Favors Petitioner

All the equities favor Petitioner. None favor Respondents. They will suffer no prejudice by litigation of Petitioner's sexual harassment allegations or claims before this Court fully protected by due process to prevent a miscarriage of justice. The pending arbitration has barely gotten off home base, and has no schedule to move it over the finish line. Judicial intervention at this point would entail little or no duplication of effort.

CONCLUSION

The arbitration that provoked this application has idled for more than three years shrouded in secrecy and inequity. Justice Louis D. Brandeis instructed, "Sunshine is said to be the greatest of disinfectants; electric light the most efficient policeman." Section 7515 of the CPLR incorporates that gospel in preventing enforcement of procedurally and substantively unconscionable mandatory arbitration clauses in employment contracts that cover sexual harassment allegations or claims.

For the reasons set forth above, Petitioner's requests this Court (1) to issue a temporary restraining order precluding Respondents from continuing to arbitrate Petitioner's sexual harassment allegations and claims in AAA Case No. 01-16-0001-7288 pending resolution of this application; (2) to grant Petitioner's request for a preliminary and permanent injunction staying the afore-referenced arbitration; and (3) to declare that CPLR section 7515 prohibits further mandatory arbitration of Petitioner's sexual harassment allegations or claims consistent with the Federal Arbitration Act and assert jurisdiction over the case itself to ensure a fair and timely adjudication that honors due process and the laws of the State of New York.

Dated: July 2019
New York, New York

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